IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

CRP.No. 756 of 2007()

OP(ELE.)13/1997 of ADDL.D.C. ,ALAPPUZHA.
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REVN. PETITIONER:

KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY SECRETARY,
KERALA STATE ELECTRICITY BOARD,
THIRUVANANTHAPURAM.

BY ADV. SRI.C.K.KARUNAKARAN, SC FOR KSEB

RESPONDENT:

PRASANNA,D/O. LATE SANKU,
PANACHIKKAL HOUSE,AROOR VILLAGE,
CHERTHALA TALUK.

BY ADV. SRI.K.K.RAMACHANDRAN PILLAI
SMT.R.LEKSHMI

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 21/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N. KRISHNAN, J.

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C.R.P. NO. 756 OF 2007

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Dated this the 21st day of November, 2007.

O R D E R

This revision petition is preferred against the order of the Addl. District Judge, Alappuzha whereby the learned Judge has awarded a sum of Rs.28,214/- as enhanced compensation for cutting of trees and Rs.31,500/- for diminution of land value with 6% interest. The Court below had relied upon a Full Bench decision of this Court reported in ***Kumba Amma v. K.S.E.B. (2000(1) KLT 542)*** wherein it has been directed to calculate the annual return at 5% for Rs.1. In the recent decision reported in ***K.S.E.B. v. Livisha (2007 (3) KLT page 1***), the Apex Court has considered the matter and it has been held that each case has to be decided on the facts and circumstances of each case. The Apex Court held that,

> "The situs of the land, the distance between the high voltage electricity line laid thereover, the extent of the line thereon as also the fact as to whether the high voltage line passes over a small track of land or

> through the middle of the land and other similar relevant factors in our opinion would be determinative. The value of the land would also be a relevant factor. The owner of the land furthermore, in a given situation may lose his substantive right to use the property for the purpose for which the same was meant to be used. So far as the compensation in relation to fruit bearing trees are concerned the same would also depend upon the facts and circumstances of each case."

2. So, in the light of this decision each matter requires independent consideration and certainly there will be necessity to have additional evidence in the matter. Therefore, the order under challenge is set aside and the matter is remitted back to the Court below for trial and disposal after affording equal opportunities to both sides to produce both documentary and oral evidence in support of their respective contentions. The parties are directed to

appear before the Court below on 18.12.07. Since the other matter is also remanded back it may be considered together.

The C.R.P. is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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